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PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS

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AUTHORITY: 42 U.S.C. 300x-65, *et seq.*, 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 300x-21, *et seq.*, 42 U.S.C. 290cc-21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

SOURCE: 68 FR 56444, Sept. 30, 2003, unless otherwise noted.

§ 54.1 Scope.

These provisions apply only to funds provided directly to pay for substance abuse prevention and treatment services under 42 U.S.C. 300x-21 *et seq.*, and 42 U.S.C. 290cc-21 to 290cc-35. This part does not apply to direct funding under any such authorities for activities that do not involve the provision of substance abuse services, such as for infrastructure activities authorized under Section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance activities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

§ 54.2 Definitions.

(a) *Applicable program* means the programs authorized under:

(1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x-66, and

(2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc-21 to 290cc-35 insofar as they fund substance abuse prevention and/or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance, under an applicable program.

(e) *SAMHSA* means the U.S. Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties under this part as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs, as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same

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eligibility conditions in applicable programs as are applied to any other non-profit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of religion or the organization's religious character or affiliation.

§ 54.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

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§ 54.6 Employment practices.

(a) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(b) To the extent that 42 U.S.C. 300x-57(a)(2) or 42 U.S.C. 290cc-33(a)(2) precludes a program participant from employing individuals of a particular religion to perform work connected with the carrying on of its activities, those provisions do not apply if such program participant is a religious corporation, association, educational institution, or society and can demonstrate that its religious exercise would be substantially burdened by application of these religious nondiscrimination requirements to its employment practices in the program or activity at issue. In order to make this demonstration, the program participant must certify: that it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise; that it makes employment decisions on a religious basis in analogous programs; that the grant would materially affect its ability to provide the type of services in question; and that providing the services in question is expressive of its values or mission. The organization must maintain documentation to support these determinations and must make such documentation available to SAMHSA upon request.

(c) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

(d) The phrases "with respect to the employment," "individuals of a particular religion," and "religious corporation, association, educational institution, or society" shall have the same meaning as those terms have under section 702 of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1(a).

§ 54.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable

programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section.

(b) *Notice.* Program participants that refer an individual to alternative service providers, and the State government that administers the applicable programs, shall ensure that notice of the individual's right to services from an alternative provider is provided to all program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section. A model notice is set out in appendix A to part 54a.

(c) *Referral to an alternative provider.* If a program beneficiary or prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider. The State shall have a system in place to ensure that referrals are made to an alternative provider. That system shall ensure that the following occurs:

(1) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider;

(2) In making such referral, the program participant shall consider any list that the State or local government

makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(3) All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR Part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records");

(4) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the State or responsible unit of government of such referral; and

(5) The program participant shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

(d) *Provision and funding of alternative services.* If an otherwise eligible applicant or recipient objects to the religious character of a SAMHSA-funded service provider, the recipient is entitled to receive services from an alternative provider. In such cases, the State or local agency must provide the individual with alternative services within a reasonable period of time, as defined by the State agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State agency. The alternative provider need not be a secular organization. It must simply be a provider to which the recipient has no religious objection. States may define and apply the terms "reasonably accessible," "a reasonable period of time," "comparable," "capacity," and "value that is not less than." The appropriate State or local governments that administer SAMHSA-funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The notice must clearly articulate the recipient's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above.

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(e) *PATH annual report.* As part of the annual report to SAMHSA, PATH grantees shall include a description of the activities the grantee has taken to comply with 42 CFR part 54.

§ 54.9 Assurances and State oversight of the Charitable Choice requirements.

In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs comply with the SAMHSA Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, States are required as part of their applications for funding to certify that they will comply with all of the requirements of such provisions and the implementing regulations under this part, and that they will provide such oversight of religious organizations.

§ 54.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

(b) Religious organizations shall segregate Federal funds they receive under an applicable program into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by government under the SAMHSA program.

§ 54.11 Effects on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

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§ 54.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an “intermediate organization”), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

PART 54a—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES, LOCAL GOVERNMENTS AND RELIGIOUS ORGANIZATIONS RECEIVING DISCRETIONARY FUNDING UNDER TITLE V OF THE PUBLIC HEALTH SERVICE ACT, 42 U.S.C. 290aa, ET SEQ., FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT SERVICES

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